Such was not the case. Mr. *Moti Lal* has pointed out the course which should have been adopted by the parties if she had desired to retire from the office of next friend in the pending suit. Section 447 of the Code of Civil Procedure directs that a next friend shall not retire at his own request without first procuring a fit person to be put in his place and without giving security for the costs already incurred. This provision of the Code was absolutely ignored by the parties. The Subordinate Judge seems to have considered that the appointment of Ram Narain by the District Judge as guardian under the Guardians and Wards Act was tantamount to his appointment as next friend for his minor brothers in the suit before the Subordinate Judge. We are not able clearly to understand the order which has been passed by him. Whilst setting aside the decree, which is the only relief which was sought, he has given a direction that the suit No. 52 of 1895, that is, the former suit, is to be restored to its original number on the file and that inquiries be made in accordance with the order of their Lordships of the Privy Council. We think that the suit was misconceived and that this appeal must be allowed. We allow the appeal, set aside the decree of the Court below and dismiss the plaintiffs' suit with costs in both Courts. We extend the time for payment of the amount due by the plaintiffs up to the 3rd January 1908.

Appeal decreed.

REVISIONAL CRIMINAL.

1907
July 16.

Before Mr. Justice Richards.

RAM DENI *v.* NAND LAL RAI.*

Criminal Procedure Code, section 195—*Sanction to prosecute—Jurisdiction to grant or revoke sanction.*

Application was made under section 195 of the Code of Criminal Procedure to a Magistrate of the third class, who tried the original case, for sanction to prosecute the complainant. This application was refused. A further application was then made to the District Magistrate, who granted sanction. *Held* that the Sessions Judge had no power to set aside the order of the District Magistrate granting sanction.

IN this case one Ram Deni filed a complaint in the Court of a Magistrate of the third class charging two persons, Nand Lal and

* Criminal Revision No. 336 of 1907.

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Jokhu, with an offence under section 323 of the Indian Penal Code. The persons complained against were tried and acquitted. Nand Lal then applied to the Court which had acquitted him, under section 195 of the Code of Criminal Procedure, for sanction to prosecute Ram Deni. The Court refused this application. Nand Lal then applied for sanction to prosecute to the District Magistrate. The District Magistrate reversed the order of the third class Magistrate and granted the sanction prayed for. The complainant Ram Deni then applied to the Sessions Judge to revise the order of the District Magistrate granting sanction. The Sessions Judge held that he had no jurisdiction to revise the District Magistrate's order and rejected the application. Ram Deni then applied in revision to the High Court.

Babu *Surendra Nath Sen*, for the applicant.

Mr. *M. L. Agarwala*, for the opposite party.

RICHARDS, J.—The circumstances of the present case are as follows:—Ram Deni made a complaint against Nand Lal and one Jokhu under section 323 of the Indian Penal Code. This prosecution resulted in the acquittal of Nand Lal and Jokhu. Nand Lal then applied to the Court which tried the original case for sanction, the application being made under section 195 of the Code of Criminal Procedure. That Court refused to sanction the prosecution against Ram Deni. Nand Lal applied to the District Magistrate. The District Magistrate granted sanction. Ram Deni then applied to the Sessions Judge to revoke that sanction. The Sessions Judge held that the District Magistrate was not an authority subordinate to him within the meaning of section 195(6) of the Code of Criminal Procedure. The present application is to review and set aside the order of the Sessions Judge on the ground that the application came regularly before him, and he ought to have gone into the merits and given a decision either revoking or confirming the sanction. Section 195 of the Code of Criminal Procedure provides that no Court shall take cognizance of certain offences without the previous sanction or on the complaint of the Court in which the offence was committed, or the sanction of some other Court to which such Court is subordinate. Sub-section (6) provides that any sanction given or refused under the section may be revoked or granted

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by any authority to which the authority giving or refusing it is subordinate. Sub-section (7) provides that for the purposes of the section every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie.

In the present case the charges against Jokhu and Nand Lal were tried in the Court of a Magistrate of the third Class. Appeals from him ordinarily lie to the District Magistrate. In my opinion the application for sanction having been made to the Court in which the proceedings were had and in respect of which sanction to prosecute was asked, the only Court to which an application under clause (6) could be made to revoke or grant the sanction was the Court of the District Magistrate, and that the view taken by the learned Sessions Judge was a correct view. I accordingly dismiss the application.

APPELLATE CIVIL.

1907
December 2.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

GORDHAN DAS AND ANOTHER (PLAINTIFFS) *v.* CHUNNI LAL (DEFENDANT) *

Religious endowment—Trust—Uncertain—Income of villages to be applied to "charitable purposes" at a dharamshala which the settlor had founded.

By a deed of trust, or *bhentnama*, the owner of seven villages settled the income thereof to the extent of Rs. 500 a month to be applied to "charitable purposes" at a dharamsala which he had founded. In course of time one of the villages mentioned in the deed of trust was alienated by a person who was at the time acting as trustee. *Held*, on suit by the trustees to have the sale cancelled and to recover possession of the village, (1) that the trust was not void for uncertainty, and (2) that it was not competent to the court in the suit as framed to declare that the village in suit was charged with a proportionate part of the total income of the seven endowed villages. *Runchordas Vandravandas* v. *Parvatibai* (1) referred to.

THE facts of this case are fully stated in the judgment of the Court.

The Hon'ble Pandit *Sundar Lal* and Dr. *Satish Chandra Banerji*, for the appellants.

Babu *Jogindro Nath Chaudhri*, Mr. *M. L. Agarwala* and Lala *Kedar Nath*, for the respondent.

* First Appeal No. 199 of 1905, from a decree of Shankar Lal, Subordinate Judge of Agra, dated the 29th of June 1905.

(1) (1899) I. L. R., 23 Bom., 725.